Joint Committee on Unemployment Insurance Oversight

Maryland General Assembly
Joint Committee on Unemployment Insurance Oversight
2009 Interim
Membership Roster

Senator Thomas McLain Middleton, Co-chairman
Delegate Herman L. Taylor, Jr., Co-chairman

Senator Nathaniel Exum
Senator Delores G. Kelley
Delegate Sally Jameson
Delegate James King

Representative of the Department of Labor, Licensing, and Regulation

Mr. Thomas Wendel, Executive Director
Department of Labor, Licensing, and Regulation

Representative of the Department of Business and Economic Development

Mr. Alfredo Goyburu
Department of Business and Economic Development

Representative of the Maryland Retailers Association

Mr. Tom S. Saquella, President
Maryland Retailers Association

Representative of the Job Opportunities Task Force

Mr. Jason Perkins-Cohen, Executive Director
Job Opportunities Task Force

Representatives of Union Labor (Maryland State and District of Columbia AFL-CIO)

Mr. Ernie Grecco, President
Metropolitan Baltimore Council AFL-CIO Unions

Mr. Charles Buttiglieri
Communications Workers of America District 2

Representative of the Maryland Chamber of Commerce

Mr. Ronald L. Adler
Laurdan Associates, Inc., H.R. Consulting

Representative of the National Federation of Independent Business

Patricia Baldwin,
Secretary and Treasurer, Reliable Contracting

Representative of the Academic Profession

Anirban Basu, M.A., M.P.P., J.D.
Chairman & CEO, Sage Policy Group & Senior Lecturer
Towson University, Sage Policy Group

Committee Staff (Department of Legislative Services)

Tami Burt
Erica White

Established under Chapters 50 and 51, 2007; effective through 12/31/10.

Maryland General Assembly
Committee on Unemployment Insurance Oversight

December 18, 2009

The Honorable Martin O'Malley, Governor
The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Members of the Legislative Policy Committee

Ladies and Gentlemen:

The Joint Committee on Unemployment Insurance Oversight was created pursuant to Chapters 50 and 51 of 2007 to continue the work of the Committee on Unemployment Insurance Oversight, which had expired at the end of 2006, and its predecessor, the Unemployment Insurance Funding Task Force, which provided recommendations during the 2004 interim to reform the unemployment insurance tax system; those recommendations became law under Chapter 169 of 2005. The joint committee is charged with monitoring the 2005 changes, as well as consideration of other changes to the unemployment insurance system, through the end of 2010 when it expires. During the 2009 interim, the joint committee met twice (October 22 and December 17).

October 22 Meeting

At the first meeting of the 2009 interim, the joint committee discussed extending the joint committee beyond its expiration date of December 31, 2010. Further, the joint committee heard from the Secretary of Labor, Licensing, Regulation, Alexander Sanchez, and the Assistant Secretary of the Division of Unemployment Insurance, Julie Squire, which is under the Department of Labor, Licensing, and Regulation (DLLR), on the condition of the trust fund and the unemployment insurance (UI) system. Several representatives of the Governor's legislative office discussed a proposal to adopt the federal modernization initiative. The Secretary of Business and Economic Development, Christian Johansson, and Delegate James King discussed business' perspective on the announcement that unemployment tax rates will be the highest allowed by law for calendar 2010.

Lastly, at this meeting the joint committee expressed its appreciation to Mr. Thomas Wendel, former Assistant Secretary of the Unemployment Insurance Division, who is retiring at the end of calendar 2009, for keeping the joint committee's informed about UI issues and his dedication to improving the UI system for over 22 years. The joint committee requested resolutions from both the Senate of Maryland and the House of Delegates to be presented to Mr. Wendel upon his retirement. The joint committee also expressed appreciation to Ms. Susan Bass, legislative liaison for the Unemployment Insurance Division, who has assumed other duties within the division, for her support and dedication to the legislature for many years. Senator Middleton expressed appreciation to the entire staff of the Unemployment Insurance Division for its dedication during an extraordinarily high claimant filing period.

Discussion to Extend the Joint Committee Beyond 2010

The joint committee discussed whether to extend its responsibilities for three more years or indefinitely. Several members indicated that the joint committee has been successful and is recognized as a model in other states. Further, because Maryland's unemployment system still needs adjustments, the group of stakeholders serving on the joint committee has the expertise and the desire to continue, over the long haul, working toward additional improvements. The joint committee voted unanimously to continue its existence indefinitely. ***Accordingly, legislation will be introduced by the joint committee during the 2010 session to remove the December 31, 2010 sunset.***

Update on the Balance of the Unemployment Insurance Trust Fund and the Condition of the Unemployment Insurance System

The joint committee received an update from Secretary Sanchez and Assistant Secretary Squire on the condition of the trust fund and the UI system. They indicated that it has been an extremely busy year with claims up 54% and the implementation of two federal extensions and an additional federal weekly benefit.

The balance of the trust fund has fluctuated over the years, growing in good economic times to over $1 billion in each of calendar 2007 and 2008 and diminishing in bad economic times to a little over $300 million as of September 2009. If the balance of the trust fund exceeds 5% of total taxable wages in the State (as measured on September 30 of the current year), the lowest tax rate table (Table A) is used to calculate employer rates for the following calendar year. For calendar 2007 and 2008, employers paid from Table A which imposes a minimum tax rate of 0.3% (on the first $8,500 of annual wages of each employee) or $25.50 per employee. However, the trust fund balance on September 30, 2008, of $895 million was short by $53 million of the amount needed to remain in the lowest tax table for the following calendar year. Accordingly, employers are paying a higher rate (Table B) in calendar 2009 – a minimum tax rate of 0.6% or $51 per employee. Approximately 66% of employers qualify for the minimum tax rate in the table that is effective for that year.

On September 30, 2009, the balance in the trust fund fell to \$302 million. This significant decline, combined with a recent decline of the taxable wage base to \$17.8 billion, places Maryland employers in the highest tax table beginning in January 2010. Table F requires employers to pay a minimum of 2.2% and a maximum of 13.5% (\$187 to \$1,147.50 per employee). The main driver of the decline of the trust fund is the increased claims for UI benefits resulting from the economic downturn. The State's unemployment rate went from 4.5% at this time last year to 7.2% by September 2009. Average monthly payouts from the trust fund grew from \$35 million in 2007 to \$94 million in September 2009. Benefit payouts reached a peak in March 2009 of \$24 million per week. Initial claims grew from about 203,000 in calendar 2006 to about 362,000 in calendar 2008 and over 301,000 in calendar 2009 (as of September 30, 2009).

While Maryland's trust fund is entering a level of concern, other states are projected to deplete their trust funds during 2009 to cover the cost of benefit payouts. Several states hit bottom during calendar 2008, depleting the balances of their trust funds. When funds are fully depleted, states may borrow from the federal government's unemployment trust fund. Approximately 22 states, as of mid-September 2009 have borrowed money to pay benefits. Generally, in order to prevent interest from accruing, which must be paid with general funds, loans must be repaid within a year; however, for calendar 2009 and 2010, the federal government has waived interest requirements. According to Ms. Squire, Maryland's trust fund will be fully depleted during early 2010. However, borrowing from the federal government is anticipated to be short-term since first quarter employer tax payments will be received in early April 2010 and may be used to repay any federal loan.

The American Recovery and Reinvestment Act of 2009, the federal stimulus legislation, was signed into law on February 17, 2009. Through federal tax revenues, a 20-week extension of unemployment insurance benefits is currently in effect for eligible claimants who have exhausted their first 26 weeks of benefits; as of April 12, 2009, the federal extension increased by 13 weeks (for a total of 33 weeks of emergency unemployment insurance benefits) as a result of the unemployment rate exceeding 6%. Additionally, any benefits paid for the week ending February 28, 2009, or later are increased by \$25 per week through federal initiative.

Proposals for Changes to the UI System, Including the Federal Modernization Initiative and the Business Perspective on the High UI Tax Rates for Calendar 2010

Ms. Carolyn Quattrocki from the Governor's Legislative Office and Mr. Matthew Gallagher, the Governor's Chief of Staff, discussed the Governor's interest in a solvent trust fund that is able to provide adequate UI benefits. The Governor created a small business task force to seek ideas that would ease the UI tax burden on businesses. One idea that can be implemented administratively is allowing businesses to pay UI taxes on a payment plan basis throughout the year. Currently, businesses pay quarterly with the majority of payments made at the end of the first and second calendar quarters. Another idea that would require legislative action is to lower the interest rate on late UI tax payments to ease the fiscal burden on employers that are unable to pay on time.

Ms. Quattrocki indicated that the Governor plans to introduce legislation that will implement the federal modernization initiative but would like to seek the joint committee's input about the specifics of the proposal. The federal stimulus legislation includes an overall total of $7 billion for the UI system across the states. Under the federal proposal, several thousand more workers in Maryland would be eligible for UI benefits and the Maryland trust fund would be eligible for a total allotment of $126.8 million. To receive the $126.8 million in additional federal funding, Maryland is required to amend its UI statute during the 2010 session.

Generally, for states to be eligible for any of their incentive payments, the federal government would award a state one-third of its total possible allotment if the state alters the base period used for calculating benefits to include the most recent calendar quarter. Many states, including Maryland, use the first four of the last five completed quarters of employment as the base period (known as the traditional approach). The quarter immediately prior to filing a claim is not used because employers do not report those earnings until the following quarter (the quarter in which the claim is filed). Minimum qualifying wages are specified under state law and are used, along with high quarter wages, to determine the weekly benefit amount for a claimant. Under an alternative base period approach, if an individual does not have sufficient wages in the base period to qualify for benefits under the traditional approach, then the alternative base period would be the last four completed calendar quarters immediately preceding the first day of the individual's benefit year. In Maryland, the impact on the trust fund of adopting the alternative base period approach is approximately $17 million annually.

Once a state adopts the alternative base period approach into its law, two-thirds of their remaining allotment would be awarded if the state adopts at least two of four additional changes specified by the legislation. These changes include (1) making part-time workers eligible for benefits; (2) providing coverage to individuals who separate from work for compelling family reasons (illness of a family member, safety reasons due to domestic violence, change in spouse's employment location); (3) providing Workforce Investment Act training benefits for at least 26 weeks in high demand industries; or (4) adding a $15 weekly allowance to UI payments for dependents.

Of the changes suggested in the federal legislation, Maryland already allows part-time workers to be eligible for UI benefits under certain circumstances, as provided under Chapters 5 and 6 of 2009 (although minor changes are necessary for this law to qualify). The Unemployment Insurance Division estimated that the part-time legislation has resulted in an additional pay-out of approximately $600,000 in UI benefits since the law took effect in April 2009. Further, Maryland law provides an allowance for dependents under the age of 16; however, the dependents' allowance amount ($8 per week) is below the $15 required by the federal legislation. The estimated cost of the changes would be $6.8 million annually for providing coverage to individuals who separate from work for compelling family reasons; $1.8 million annually for providing training benefits; and $15.6 million for increasing the weekly allowance to UI payments for dependents.

Due to the ease of administration and low cost to the trust fund, Ms. Squire indicated that the Governor is interested in the options concerning eligibility for part-time, compelling family reasons, and additional training. The option concerning dependents allowance would be too expensive.

In addition to expanding eligibility for UI benefits, the $126.8 million could be used to increase the balance in the trust fund, potentially allowing the State to move to a lower tax rate in calendar 2011. In order for a state to access its additional federal funds, the required provisions must be in place by August 31, 2011, and the effective date of the legislation must be on or before September 21, 2012.

During the discussion, Secretary Johansson of the Department of Business and Economic Development indicated that there are several venues for the business community to weigh in on their ideas as to how to get through current difficult economic period, especially in the construction field which has seen a 50% loss of jobs. He stated that any ideas generated by the business community will be brought to the joint committee for consideration. Delegate King, as a member of the Governor's Small Business Task Force, expressed concern especially for small businesses. Mr. Ronald Adler and Mr. Thomas Saquella, representatives the business community, generally suggested that if the federal initiative is adopted, then an opportunity would be created to make other changes to the system to diminish the costs of the federal initiative, such as moving to a variable duration approach, implementing a waiting week approach, and eliminating eligibility for sick claimants. Currently, claimants are eligible for up to 26 weeks, regardless of how long they have been in the workforce; variable duration would limit the number of benefit weeks depending on the length of time the claimant had been in the workforce. By implementing a waiting week approach, a claimant would still be eligible for up to 26 weeks of benefits but would not receive a first UI benefit check until a week after the claimant was eligible for benefits; the savings from the delay would result if the claimant was rehired before drawing all 26 weeks. Currently, a claimant who becomes sick continues to be eligible for UI benefits despite not being able to work, not being available for work, and not actively seeking work, as is not the case with respect to the general requirements for eligibility for unemployment insurance benefits.

Mr. Jason Perkins-Cohen, a member of the joint committee and a representative of low-income consumers, encouraged adoption of the federal initiative especially since the changes may eventually be a federal requirement in the future. Mr. Ernie Grecco, another member of the joint committee and a representative of organized labor, questioned why options other than the federal initiative options were being discussed. It light of the discussion, Senator Middleton requested that a small group of the joint committee meet to see if a compromise could be reached with the various stakeholders before the next meeting.

December 17 Meeting

At the second meeting of the 2009 interim, the joint committee further discussed the Governor's proposal and also heard from the business community on suggested benefit changes that would ease the additional costs that would be realized from adopting the federal modernization initiative. The small group of the joint committee was unable to reach consensus despite meeting several times.

Assistant Secretary Squire attended the meeting and began her comments by thanking the various stakeholders for providing input to the Unemployment Insurance Division. She also indicted that the new federal extension of benefits (effective November 6, 2009) provides claimants with an additional 14 weeks. Letters were sent to the claimants who had exhausted their benefits (about 20,000) and to claimants who are about to exhaust their benefits (about 47,000) to inform them of the additional weeks. Accordingly, with this new extension, a claimant who is actively seeking work would be eligible for 73 weeks of benefits (26 weeks are paid by the Maryland trust fund and then three tiers of federal benefits: first tier is 20 weeks; second tier is 13 weeks, and the last tier is 14 weeks).

Mr. Joseph Bryce, Governor's Chief Legislative Officer, thanked the Secretary of Business and Economic Development and the Secretary of Labor, Licensing, and Regulation for their work on the UI tax burden issue. He stressed that the Governor is interested in putting people back to work and, therefore, will be offering a tax credit for employers who hire. He stated that the Governor plans to implement administrative changes, including allowing individual employers to enter into payment plans for their UI tax payments; however, he indicated that any 2010 tax obligation must be received by the end of 2010 (but preferably September 30) so that there are not other unintended consequences for employers (*i.e.*, IRS tax issues). Further, the Governor plans to introduce legislation to reduce the interest payment for employers who are unable to make timely tax payments. Mr. Bryce indicated that it is a policy decision not to make any other decisions at this time, but the Governor would like to pursue the federal $126.8 million by enacting the federal modernization proposal. Further, the Governor is interested in additional immediate rate relief that could be realized by implementing Table E instead of Table F in calendar 2010. Table E requires employers to pay a minimum of 1.8% and a maximum of 12.9% ($153 to $1,096.50 per employee). By paying from the second highest tax rate table instead of the highest tax rate table, employers overall UI tax obligation will decrease by about $83 million. With the session approaching, time is of the essence for policy decisions to be made.

The co-chairs requested that each of the members on the joint committee comment on the Governor's proposal. Mr. Grecco and Mr. Perkins-Cohen (representatives of organized labor and low-income consumers) generally indicated that they are satisfied with the Governor's proposals and would not support making any other changes that would limit UI benefits as is being proposed by the business community. Mr. Saquella, Mr. Ronald Adler, and Ms. Patricia Baldwin (representatives of businesses) generally indicated that they could support the Governor's proposal only if there are other concessions. Otherwise, their respective memberships are willing to pay the entire 2010 obligation required under Table F (spread out over the entire year) and forego the federal $126.8 million. While not fully discussed, the concessions proposed include (1) changing the calculation of benefit entitlement from a fraction of high quarter earnings to 1% of base period wages; (2) requiring a waiting week for all voluntary quits (14 states do not have a waiting week); (3) eliminating dependents allowance payments (13 states permit dependent allowance payments – estimated savings to the trust fund of $5 million); (4) eliminating sick claims (estimated savings to the trust fund of $2.7 million); and (5) removing the "stoppage of work" provision in current law. The business representatives indicated that these concessions could help offset the additional cost of the federal modernization proposal which is estimated to be an additional $19.6 million per year ($17 million for implementing an alternative base period; $600,000 for expanding benefits to part-time workers; and $2 million for providing UI benefits to claimants who take training classes).

Mr. Morris Seagall, representative of an academic profession, indicated that the $126.8 million is mandatory to keep the trust fund afloat and that the alternative base period approach is most likely to be required in the future. Further, he indicated that while the federal government is focusing on job creation, it is reasonable to spread out UI tax payments for employers and that the viability of small businesses must be considered in any proposal.

Senators Kelley and Exum indicated that some of the business representative ideas should be considered, while others may not be feasible. Generally, the joint committee agreed that the small group of the joint committee needs to continue its efforts for a compromise package. During early January 2010, the joint committee will reconvene to discuss their efforts.

It is anticipated that the Governor will introduce a UI legislative package during the 2010 session that will amend Maryland's statute to meet the requirements of the federal modernization legislation.

The joint committee would like to express its appreciation for the time and effort invested by all members and agency staff. The joint committee looks forward to the same spirit of cooperation and assistance in the future as it continues its responsibilities of monitoring the unemployment insurance system.

Respectfully submitted,

Thomas McLain Middleton
Senate Co-chair

Herman L. Taylor, Jr.
House of Delegates Co-chair

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